

1 THE HONORABLE KATHLEEN M. O'CONNOR

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6  
7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
8 IN AND FOR THE COUNTY OF SPOKANE

9 WASHINGTON STATE NURSES  
ASSOCIATION, on behalf of certain  
10 employees it represents, and VIVIAN MAE  
HILL, individually and on behalf of others  
11 similarly situated,

12 Plaintiff,

13 v.

14 SACRED HEART MEDICAL CENTER,

15 Defendant.

No. 07-2-05766-2

ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT AND  
DENYING DEFENDANT'S  
THIRD MOTION FOR  
SUMMARY JUDGMENT

16  
17 This matter came before the Court on Plaintiff Washington State Nurses  
18 Association's ("WSNA") motion for summary judgment. The Court has considered the  
19 pleadings in the record, those listed below, and the oral argument of counsel:

- 20 1. Plaintiffs' Motion for Summary Judgment (Dkt. # 232);  
21 2. Declaration of Counsel Carson Glickman-Flora in Support of Plaintiffs' Motion for  
22 Summary Judgment (Dkt. # 234);  
23 3. Declaration of Jeffery Munson, Ph.D. (Dkt. # 233);  
24 4. Defendant's Opposition to Plaintiff's Motion for Summary Judgment (Dkt. # 246);  
25

ORDER GRANTING WSNA'S MOTION FOR SUMMARY  
JUDGMENT AND DENYING DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT - 1  
Case No. 07-2-05766-2

LAW OFFICES OF  
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- 1 5. Declaration of Patricia Gonder-Hirst in Support of Defendant's Opposition to
- 2 Plaintiffs' Motion for Summary Judgment and Defendant's Motion to Strike Dr.
- 3 Munson's Declaration (Dkt. # 247);
- 4 6. Defendant's Motion to Strike the Declaration of Dr. Jeffrey Munson (Dkt. # 242);
- 5 7. Plaintiffs' Reply in Support of Their Motion for Summary Judgment (Dkt. # 262);
- 6 8. Second Declaration of Jeffrey Munson, Ph.D (Dkt. # 261);
- 7 9. Declaration of Counsel Terrance Costello in Support of Plaintiffs' Response to
- 8 Defendant's Motion to Strike (Dkt. # 263);
- 9 10. Plaintiffs' Response to Defendant's Motion to Strike the Declaration of Jeffrey
- 10 Munson (Dkt. # 260);
- 11 11. Defendant's Reply in Support of Its Motion to Strike the Declaration of Jeffrey
- 12 Munson (Dkt. # 269);
- 13 12. Defendant's Third Motion for Summary Judgment of All Claims (Dkt. # 237);
- 14 13. Declaration of Patricia Gonder-Hirst in Support of SHMC's Third Motion for
- 15 Summary Judgment (Dkt. # 238);
- 16 14. Declaration of Summer Stinson in Support of SHMC's Third Motion for Summary
- 17 Judgment (Dkt. # 239);
- 18 15. Declaration of Paula Lehmann in Support of SHMC's Third Motion for Summary
- 19 Judgment (Dkt. # 240);
- 20 16. Plaintiffs' Response to Defendant's Third Motion for Summary Judgment (Dkt. #
- 21 253);
- 22 17. Declaration of Carson Glickman-Flora in Support of Plaintiffs' Response to
- 23 Defendant's Third Motion for Summary Judgment (Dkt. # 254);
- 24 18. Defendant's Reply in Support of Third Motion for Summary Judgment of All Claims
- 25 (Dkt. # 258);

1 19. Declaration of Paula Lehmann in Support of SHMC's Reply in Support of Third  
2 Motion for Summary Judgment of All Claims (Dkt. # 259);

3 20. The oral argument of the parties at the hearing on July 23, 2010.  
4

5 Being fully advised on the matter, the Court hereby incorporates its prior rulings and  
6 **HEREBY FINDS:**

7 1. Summary Judgment Pursuant to CR 56: After full consideration of the  
8 evidence submitted by the parties, the Court finds that there is no triable issue  
9 of any material fact, and therefore Vivian Hill and the Washington State  
10 Nurses Association's ("WSNA") motion for summary judgment is  
11 GRANTED. The Defendant's Third Motion for Summary Judgment is  
12 DENIED.

13 2. Minimum Wage Act Claims: As the Court found in its March 12, 2009 Order,  
14 consistent with the Washington Supreme Court's decision in *Wingert v.*  
15 *Yellow Freight Systems, Inc.*, 146 Wn.2d 841, 50 P.3d 256 (2002), Vivian Hill  
16 and the registered nurses represented by the Washington State Nurses  
17 Association (hereinafter "nurses") who worked through their rest periods  
18 provided their employer Sacred Heart Medical Center ("SHMC") with  
19 additional time worked. Although SHMC provides nurses with a 15-minute  
20 rest period for each four hours of work, state law requires only a 10-minute  
21 rest period. Therefore, for purposes of this case, ten minutes of the nurses'  
22 missed rest break is at issue here and must be compensated at the appropriate  
23 time and one-half rate of a nurse's "regular rate of pay" when it results in  
overtime pursuant to RCW 49.46.130.

24 a. Ten minutes of a missed rest break is time worked under the Washington  
25 Minimum Wage Act. Thus, a missed rest break will result in overtime

1 hours if the nurse worked more than 40 hours in the week the missed rest  
2 break occurred, or if the missed rest break caused the nurse to work more  
3 than 40 hours in one week.

4 b. Under the collective bargaining agreement SHMC is obligated to pay  
5 nurses for the full 15-minute missed rest break. The nature and type of  
6 nursing work at SHMC does not allow for intermittent rest breaks. Nor  
7 are rest breaks handled in an intermittent manner at Sacred Heart.  
8 Therefore, for these reasons, the Court finds that the nurses should be paid  
9 for 10 minutes at time and one-half and five minutes at straight time when  
10 they work through a rest break that results in overtime hours.

11 c. Defendant pays the nurses 15 minutes of straight time pay for a missed  
12 rest break even when it results in overtime hours worked. The Court finds  
13 that this payment does not satisfy the requirements of the Washington  
14 Minimum Wage Act. While there is a mathematical coincidence that 10  
15 minutes of time at the overtime rate equals 15 minutes of pay, under the  
16 collective bargaining agreement SHMC is obligated to pay nurses for the  
17 full 15-minute missed rest break. Therefore the nurses should be paid for  
18 10 minutes at time and one-half and 5 minutes at straight time for a missed  
19 rest break. The five minutes of pay at straight time SHMC pays for the  
20 final five minutes of a nurse's contractual missed rest break does not  
21 satisfy its obligation to pay the overtime rate for the first ten minutes of a  
22 nurse's missed rest break. Therefore, Defendant owes an additional five  
23 minutes of pay for each missed 15-minute rest break that resulted in  
overtime hours worked.

24 3. Preemption: As found in its March 12, 2009 Order, the Court also finds, for  
25 the same reasons expressed in the remand order regarding this case from the

1 United States District Court for the Eastern District of Washington on May 5,  
2 2008, that this lawsuit is not preempted by the Labor Management Relations  
3 Act (LMRA), 29 U.S.C. § 185(a), or other federal law.

4 4. Standing: As found in its March 12, 2009 Order, the Court also finds that the  
5 Washington State Nurses Association has standing to pursue this action on  
6 behalf of its membership because all three parts of the test adopted in  
7 *International Association of Firefighters v. Spokane Airports*, 146 Wn.2d 207,  
8 45 P.3d 186 (2002), are satisfied here. The members of WSNA would  
9 otherwise have standing to sue in their own right. WSNA is a labor  
10 organization, and recovering wages owed to its membership is germane to its  
11 purpose. Finally, individual participation of the membership is not required  
12 because the necessary information (including when breaks were missed, the  
13 number of hours worked in a day or a week, and the nurses' rates of pay) are  
14 reflected in payroll or other documents within the possession the defendant.

15 5. Defendant's other defenses: As found in its March 12, 2009 Order, the Court  
16 has considered SHMC's defense that WSNA and Ms. Hill are precluded from  
17 pursuing this lawsuit, or have waived their rights, due to the arbitration of a  
18 contract dispute between SHMC and WSNA in 2006. Because the record  
19 demonstrates that the arbitration between WSNA and SHMC did not involve  
20 the Minimum Wage Act claims at issue in this lawsuit, the arbitration does not  
21 have any preclusive effect on this lawsuit for either Ms. Hill or WSNA. If  
22 SHMC has paid a nurse for a missed rest break, that pay will be offset for a  
23 future claim.

24 6. Damages: Damages are appropriately determined in this case by examining  
25 the Defendant's payroll records. Plaintiffs retained an expert, Dr. Jeffery  
Munson, to extract and calculate the wages owed to the nurses from a

1 database (the "records") provided by the Defendant. Dr. Munson used the  
2 following approach:

- 3 a. SHMC's records provided specific dates of occurrences for approximately  
4 one third of the missed rest breaks in its records from May 5, 2006 to  
5 December 6, 2009. For each of these missed rest breaks, Dr. Munson  
6 determined whether the nurse worked 40 hours in the week the missed rest  
7 break occurred and, if so, calculated five minutes of that nurses' rate of  
8 pay for that work week. This method determined the damages owed for  
9 these missed rest breaks with exactness. Dr. Munson then determined the  
10 average damage value for these rest breaks with specific dates.
- 11 b. For the approximately two-thirds of missed rest breaks for which there are  
12 no specific dates in the database, Dr. Munson assumed that these rest  
13 breaks occurred in an overtime week in the same proportion as those rest  
14 breaks for which the records provided dates of occurrences. He then  
15 multiplied this number by the average damage for the missed rest breaks  
16 with specific dates of occurrences.
- 17 c. This approach is reasonable and appropriate in the absence of more  
18 specific records and provides a damage value with adequate exactness and  
19 specificity. An employer cannot evade liability under the Minimum Wage  
20 Act by failing to keep accurate records, and the nurses will not be denied  
21 damages because Sacred Heart failed to keep accurate records here.  
22 Sacred Heart cannot be heard to complain that ten minute rest breaks  
23 should have been recorded, where, as here its own forms reflect  
24 management approval of missed fifteen minute breaks duly recorded in its  
25 payroll records.

1 d. The damages are thus liquated, and thus Plaintiffs' are entitled to  
2 prejudgment interest at a rate of 12 percent from the date of each missed  
3 rest break. For those rest breaks that are not attributable to a specific date,  
4 liquidated damages will be based on an average amount of liquidated  
5 damages for the missed rest breaks that are attributable to a specific date.

6 e. The wages owed to the nurses, including prejudgment interest, is  
7 \$52,361.41.

8 7. Defendant's Motion to Strike. Dr. Munson's specialized knowledge was not  
9 challenged, and this Court finds that he is qualified due to his education and  
10 training to offer expert testimony to assist this Court in this matter. Dr.  
11 Munson's testimony was based on payroll data provided by the Defendant,  
12 and his conclusions are supported by two detailed declarations. Therefore,  
13 Defendant's Motion to Strike Dr. Munson Declarations is DENIED.

14 8. Double Damages: Based on the 2006 Levak arbitration decision, SHMC  
15 contends it is only required to pay nurses their straight time rate of pay for  
16 fifteen minutes for each claimed missed rest break, regardless of whether the  
17 rest break resulted in overtime hours. The record demonstrates that these  
18 payments were willful and that there was no bona fide dispute as narrowly  
19 defined by Washington cases interpreting RCW 49.52.070. Therefore,  
20 Plaintiffs are awarded double damages under RCW 49.52.070.

21 9. Attorneys Fees and Costs: Pursuant to RCW 49.52.070, Plaintiffs are  
22 awarded their reasonable attorneys' fees and expenses incurred in pursuing  
23 this matter. Plaintiffs are awarded \$200,000.00 in attorneys' fees and  
24 \$22,545.42 in expenses, including \$11,800.00 in expenses for Dr. Munson.

25 a. The Court finds that the \$200,000.00 in attorneys' fees are adequately  
supported by the declaration of counsel and reasonable considering the

1 time and labor involved in this matter, the complexity of the defenses  
2 raised by the Defendant, the experience and ability of the lawyers  
3 performing the services, and the rate customarily charged by attorneys in  
4 the Spokane area.


5 b. Pursuant to *McConnell v. Mothers Work, Inc.*, 131 Wn.App. 525, 532, 128  
6 P.3d 128 (2006), the Court also finds the expenses incurred by the  
7 Plaintiffs, including, but not limited to, those costs for its expert witness,  
8 depositions and transcripts not used at trial, and travel expenses, are  
9 reasonable and recoverable under the Washington Minimum Wage Act.

10 10. Total Judgment Amount. Therefore, it is ORDERED that Defendant pay  
11 Plaintiffs:

12 a. \$104,722.82 in double damages, including prejudgment interest, for  
13 unpaid wages and

14 b. \$222,545.42 in attorneys' fees and expenses in bringing this lawsuit.

15 IT IS SO ORDERED this 20 day of August, 2010.

16  
17   
18 The Honorable Kathleen O'Connor  
19 Spokane County Superior Court Judge

20 Presented by:

21 Both Counsel, Mrs. Glickman-Flora and Mr.  
22 David Campbell, WSBA #13896 Lehew approve the entry  
23 Carson Glickman-Flora, WSBA #37608 of this order  
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